

TRIBAL CODE

CHAPTER 80

TRIBAL COURT CODE

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#### HISTORY NOTE:

#### Current Ordinance

Chapter I, II, III IV and VI adopted July 27, 1981, Resolution No. 167(81).

Chapter IV adopted September 21, 1981, Resolution No. 218(81).

Revised and readopted January 31, 1983, Resolution No. 19(83).

Amendment Section 80.204, Resolution No. 193(02).

#### Amendments

Chapter V, Conservation Code of Offenses, was replaced and repealed by Conservation Code: Members, Tribal Code Ch. 20. See History Note for Ch. 20.

Chapter VI, Juvenile Code, was replaced and repealed by Child Welfare Code, Tribal Code Ch. 31. See History Note for Ch. 31.

Sec. 80.303(2)(c) was added January 24, 1984, Resolution No. 57(84).

Sec. 80.303(2)(c) was amended and Sec. 80.303(2)(d) was added February 20, 1984, Resolution No. 83(84).

Sec. 80.103(1) was amended April 24, 1989, Resolution No. 157(89).

Sec. 80.303(2), was amended February 12, 1996, Resolution No.44(96).

Secs. 80.102, 80.103, 80.104, 80.201, 80.204, 80.301, 80.303, 80.306, 80.308, 80.309, 80.310, 80.315, were amended, Secs. 80.307, 80.309, 80.313, 80.316, 80.320, 80.321 were added, and throughout sections were renumbered and typographical and formatting errors were corrected March 27, 2013, Resolution No. 151(13).

Secs. 80.103(3), 80.104, and 80.309 were amended April 30, 2013, Resolution No. 188 (13).

Chapter V, Recognition and Enforcement of Foreign Court Judgment was added March 4, 2014, Resolution No. 116(14), and was approved by the Bureau of Indian Affairs on April 9, 2014.

Sec. 80.103(3)(b) was amended to delete (iii) and insert 80.103(3)(b)(iii) Has practiced law for at least five years and (iv) Has knowledge and experience in Chippewa culture and customs, June 22, 2015, Resolution No. 293(15).

#### Prior Ordinance

The tribal court was originally established in 1948 in Law and Order Ordinance, Tribal Code Ch. 70. Chapter II contains civil provisions which largely but not entirely, have been superseded by this ordinance. See History Note, Tribal Code Ch. 70. The tribal court did not in fact exist from the enactment of P.L. 280 until the court was reestablished under this Chapter in 1983.

TRIBAL CODE

CHAPTER 80

TRIBAL COURT CODE

CHAPTER I: THE LAC DU FLAMBEAU TRIBAL COURT

80.101 Creation of the Court.

There is hereby established the Lac du Flambeau Tribal Court.

80.102 Jurisdiction of the Lac du Flambeau Tribal Court.

The Tribal Court shall have jurisdiction over all cases and controversies, both criminal and civil, in law or in equity, arising under the Constitution, laws, customs, and traditions of the Lac du Flambeau Band of Lake Superior Ojibwe, including all actions in which the provisions of the Indian Child Welfare Act of 1978, 25 U.S.C., sec. 1901, *et seq.*, are applicable and cases in which the Tribe, or its officials and employees shall be a party, as described in Article X, Section 3 of the Constitution of the Lac du Flambeau Band of Lake Superior Chippewa Indians of Wisconsin. This grant of jurisdiction shall not be construed as a waiver of the Tribe's sovereign immunity.

80.103 Composition of the Lac du Flambeau Tribal Court.

- (1) Trial Court Judges. The Tribal Court shall consist of one standing Chief Trial Judge, such number of standing Associate Trial Judges as the Tribal Council shall deem necessary and appropriate, and those Judges Pro Tempore appointed from time to time under the rules of this Code.
- (2) Standing Judges.
  - (a) Selection. The standing judges of the Tribal Court shall be selected by a majority vote of the Lac du Flambeau Tribal Council at a meeting in which a quorum is present.
  - (b) Qualifications. No person shall be eligible for selection as a standing judge unless he or she:
    - (i) is at least thirty (30) years of age;

- (ii) is of good moral character and integrity;
  - (iii) has never been convicted of an offense termed a felony by the laws of the State of Wisconsin or of the United States;
  - (iv) has not been convicted within the last twelve (12) months of an offense termed a misdemeanor under the laws of the Lac du Flambeau Band, the United States, or the State of Wisconsin;
  - (v) is capable of preparing papers and conducting hearings incident to the office of judge;
  - (vi) has demonstrated knowledge of the Lac du Flambeau Tribal Code and Ordinances and understanding of federal and State laws.
- (c) Term. Each standing judge shall hold office for a period of three (3) years, unless sooner removed for cause, or by reason of resignation, death, or incapacitation. A standing judge shall be eligible for reappointment.
- (3) Judges Pro Tempore.
- (a) Selection. The Lac du Flambeau Tribal Council may appoint Judges Pro Tempore by majority vote to serve under any of the following circumstances:
    - (i) To fill the role of a standing Trial Judge if no standing judge is available to hear a particular matter before the Tribal Court;
    - (ii) To fill the role of a standing Trial Judge in any case, other than a probate or family-law case, where the amount in controversy is equal to or more than \$100,000;
    - (iii) To fill the role of a standing Trial Judge in any case to which the Tribe or a tribal agency or enterprise is a party and the opposing party is a non-member of the Tribe, except cases involving traffic and other criminal offenses, Indian-child welfare, child support, family law, natural resources, land management, or the Tribe's housing authority;
    - (iv) To fill the role of an appellate judge on a panel hearing an appeal from a decision of a Trial Judge.



- (b) Qualifications. No person shall be eligible for selection as a Judge Pro Tempore unless he or she meets all of the qualifications of a standing judge and:
  - (i) Graduated from an accredited school of law;
  - (ii) Is licensed by and in good standing to practice before the court of any jurisdiction; and
  - (iii) Has practiced law for at least five years; and
  - (iv) Has knowledge and experience in Chippewa culture and customs.
- (c) Term. Each Judge Pro Tempore shall hold office for the duration of the case or cases to which he or she is appointed to hear. Judges Pro Tempore may be appointed to hear more than one case at a time so long as each case to which the judge is appointed meets the criteria of this section. The standards of disqualification and removal applicable to standing judges also apply to Judges Pro Tempore. Judges Pro Tempore may be reappointed following the conclusion of an appointment.

80.104 Disqualification and Removal of Judges.

- (1) Disqualification.
  - (a) A judge shall be disqualified to sit on any case in which he or she has any direct interest, is or has been a pre-trial witness, or is so related to a party as to render it improper for him or her to preside at the trial proceedings.
  - (b) A standing Trial Judge shall be disqualified from any case in which the Tribe or a tribal agency or enterprise is a party and the opposing party is a non-member of the Tribe, except cases involving traffic and other criminal offenses, Indian-child welfare, child support, family law, natural resources, land management, or the Tribe's housing authority.
  - (c) Upon disqualification of a Trial Judge, any alternate Trial Judge shall sit on the case.
  - (d) Upon disqualification of an appellate judge, an alternate Judge Pro Tempore shall be appointed to sit on the case.

(2) Removal of judge.

- (a) A judge may be suspended from office upon written charges brought for his or her removal which recite good cause. A hearing shall be provided before the Lac du Flambeau Tribal Council within ten (10) days of the judge's receipt of written notice of the charges, at which time the judge shall be provided with the opportunity to respond to the charges against him, including the presentation of the testimony of witnesses in his or her behalf. A judge may be removed only for good cause shown at the hearing, and only upon a vote taken by secret ballot of a two-thirds (2/3) majority of the Tribal Council.
- (b) Upon the resignation, death or physical or mental incapacitation of a judge, the Lac du Flambeau Tribal Council shall appoint an individual to the remainder of such judge's term of office.

80.105 Clerk of Court.

- (1) The Lac du Flambeau Tribal Council shall appoint such Clerks of Court as may be required, upon such terms and conditions as are determined by the Council.
- (2) The Clerk of Court shall render assistance to the Court, to tribal enforcement personnel, and to all other persons having business with the Court in drafting complaints, subpoenas, warrants, notices of appeal, and other Court documents. The Clerk of Court shall attend and keep written records of all proceedings of the Court, and is authorized to administer oaths to witnesses and to collect fees, fines, forfeitures, costs and other monies. The Clerk of Court shall be bonded in an amount fixed by the Tribal Council, and shall transmit any and all monies received to the Tribal Treasurer.

80.106 Tribal Prosecutor.

A Tribal Prosecutor shall be appointed by the Lac du Flambeau Tribal Council, for such term, and upon such conditions, as are determined by the Council. The Prosecutor shall represent the Lac du Flambeau Band of Lake Superior Chippewa before the Court in all appropriate proceedings.

80.107 Additional Rules of Court.

The time and place of court sessions, and all rules of court procedure not prescribed by this Code, shall be established by rules of court adopted by the judges of the Tribal Court, subject to the approval of the Tribal Council.

## CHAPTER II: THE LAC DU FLAMBEAU COURT OF APPEALS

### 80.201 Creation of the Lac du Flambeau Court of Appeals.

There shall be a Lac du Flambeau Court of Appeals consisting of a panel of three Judges Pro Tempore appointed under this Code. Panels shall hear appeals allowed by this Code.

### 80.202 Jurisdiction of the Court of Appeals.

(1) The jurisdiction of the Court of Appeals shall be limited to review of final orders, sentences, and judgments of the trial court. On appeal, each case shall be submitted upon the trial record, although the Court of Appeals may, upon proper motion being made, authorize the supplementation of the record in order to facilitate the dispensing of justice.

(2) The Court of Appeals may increase or decrease any sentence in a criminal case; may affirm, modify, vacate, set aside or reverse any judgment, decree or order, or require such further proceedings as may be just in the circumstances.

### 80.203 Procedure for Appeal.

- (1) Any party who is aggrieved by any order, sentence or judgment of the trial court may appeal to the Court of Appeals in the manner prescribed by this Code and by any rules promulgated by the Court of Appeals.
- (2) Appeal to the Court of Appeals shall be taken not later than twenty (20) days after the entry of judgment or order appealed. After expiration of the period for timely appeal, the Court of Appeals may, in its discretion, grant leave to appeal from any order or judgment upon the showing, supported by affidavit, that there is merit in the grounds for appeal and that the delay was not due to appellant's culpable negligence.
- (3) Immediately after an appeal has been filed with the Clerk of Court, a copy of the appeal shall be served by the appellant upon all other parties to the case. Simultaneously with the filing, a filing fee of \$25.00 shall be paid to the Clerk of Court, unless the appellant also files an affidavit of indigency as provided in sec. 80.304, in which case no filing fee shall be required.
- (4) The appeal shall state the name of the case, designating the parties in the same order as in the trial court, stating the ruling which is being appealed, the date it was entered, and the grounds on which the appellant asserts it is in error. The appeal shall be dated and signed by the appellant or his attorney, with a business address plainly written under such signature. A copy of the judgment

or order appealed from shall be attached, together with a transcript of the proceeding in the trial court or any other record made by the Clerk of Court.

- (5) The appeal must also be accompanied by a bond or cash in an amount satisfactory to the trial court to guarantee payment or satisfaction of the judgment, including costs, of the trial court if that judgment is affirmed on appeal.

80.204 Effect of Judgments Pending Review.

- (1) Stays. Except as otherwise provided in subsection (3), in any case in which an appeal is taken in accordance with the rules of the Court of Appeals and this Code, the judgment or order of the trial court may be stayed pending the a final determination of the appeal by the Court of Appeals for good cause by either the trial court or the Court of Appeals on motion of the appellant.
- (2) Bonds. Except as otherwise provided in subsection (3), in all cases involving a fine or civil forfeiture, a bond may be required at the discretion of the Court of Appeals in an amount not to exceed the maximum penalty.
- (3) Appeals of evictions. No appeal by a defendant of an order for Judgment for restitution of the premises may stay proceedings on the judgment unless the appellant serves and files with the notice of appeal an undertaking of the plaintiff, in an amount and with surety approved by the judge who ordered the entry of judgment. The undertaking shall provide that the appellant will pay all costs and disbursements of the appeal which may be taxed against the appellant, obey the order of the appellate court upon the appeal and pay all rent and other damages accruing to the plaintiff during the pendency of the appeal. Upon service and filing of this undertaking, all further proceedings in enforcement of the judgment appealed from are stayed pending the determination of the appeal. Upon service by the appellant of a copy of the notice and appeal and approved undertaking upon the Tribal Police Chief holding an issued but unexecuted writ of restitution or of execution, the Chief shall promptly cease all further proceedings pending the determination of the appeal. If the tenant fails to pay rent when due, or otherwise defaults in the terms of the undertaking, the payment guaranteed by the undertaking with surety shall be payable immediately to the plaintiff and shall not be held in escrow by the court. Upon the failure of the tenant to pay rent when due, or upon other default by the tenant in the terms of the undertaking, the stay of proceedings shall be dismissed and the Chief shall immediately execute the writ of restitution.

## CHAPTER III: RULES FOR ALL ACTIONS BEFORE THE TRIBAL COURT

### Part One - General Provisions

#### 80.301      Witnesses.

- (1) Subpoenas. The Trial Judge of the Tribal Court shall have the power to issue subpoenas for the attendance of witnesses either on his own motion or on the request of any of the parties to the case. Such subpoena may include direction to produce records and documents in the possession or under the control of the person named in the subpoena. The subpoena shall bear the signature of the judge issuing it.
  - (a) Service of such subpoena shall be by a member of the Tribe appointed by the Court for that purpose, or by a member of the Tribe's law enforcement staff.
  - (b) Failure to obey such subpoena shall be considered willful contempt and shall subject the perpetrator to the Court's remedial powers which are specified in this Chapter.
- (2) Witness fees.
  - (a) Each witness answering a subpoena shall be entitled to compensation for his or her reasonable expenses actually incurred for meals, loss of wages, child care, and transportation, at a maximum amount of \$50.00 for each day that the witness is required to be present in court. The fee shall be the responsibility of the party requesting the subpoena, unless such fee is held by the Trial Judge to constitute court costs.
  - (b) Witnesses who testify voluntarily shall be paid by the party calling them.

#### 80.302      Records of Court.

The trial court and the Court of Appeals shall keep, for public inspection, unless specifically excepted by this Code, a record of all proceedings in the Tribal Court, showing: The title of the case; the names and addresses of the parties, attorneys, and witnesses; the substance of the complaint; the day of the hearing or trial; the name(s) of the judge; the findings of the Court and the judgment; and any other facts or circumstances deemed of importance to the case.

80.303      Practice Before the Court.

- (1) Admission requirement. No attorney or lay spokesman shall represent any person in an action before the Tribal Court unless such attorney or spokesman is duly admitted to practice before the Lac du Flambeau Tribal Court.
- (2) Procedure for admission.
  - (a) Any attorney wishing to practice before the Tribal Court shall file a written request for admission with the Clerk of Court, accompanied by:
    - (i) a Certificate of Good Standing from the State Bar or Supreme Court of all states in which the attorney is duly licensed to practice law;
    - (ii) a completed form approved by the Chief Judge that will include, but not be limited to, information regarding the attorney's familiarity with Tribal law; and
    - (iii) an admission fee of \$75.00.
  - (b) Any lay spokesman wishing to practice before the Tribal Court shall file a written request for admission with the Clerk of Court, accompanied by an affidavit reciting the qualification of such spokesman to represent another before the Court. Such request shall be accompanied by an admission fee of \$25.00.
  - (c) Notwithstanding subsections (a) and (b), the Tribal Court may in its discretion allow an attorney or lay advocate to represent a party in a particular case without payment of the fee for admission to practice if the representation is being undertaken on behalf of an indigent client on a pro bono basis or by payment through Wisconsin Judicare.
  - (d) The Tribal Court may in its discretion appoint an attorney or lay advocate to represent a defendant in a case at the expense of the Tribe, provided:
    - (i) the defendant shall have established to the court the inability to pay an attorney or lay advocate, according to such standards as the Court may adopt for the purpose; and
    - (ii) there are sufficient funds budgeted for that purpose in the operating budget for the Tribal Court; and

- (iii) the Tribal Court shall receive an application for payment at the conclusion of the case, determine the reasonableness of the fee, and order payment of such fee as the Court determines to be reasonable.
  - (e) The Chief Judge shall grant or deny all applications for attorneys and lay advocates to be admitted to practice before the Tribal Court, and must admit all persons who meet the qualifications in this Section 80.303.
  - (f) A person may be suspended from practice upon petition to the Chief Judge or the Judge of any case in which the person is representing a party to suspend that person's license. The bases for such suspension include repeated failure to comply with the rules of Tribal Court, violation of any rules of professional responsibility that apply to the person, or other misconduct before the Tribal Court. The Judge with whom the petition has been filed shall then give notice and hold a hearing to determine if just cause exists to suspend the license. The Judge must rule on all such petitions in writing and shall set the term of the suspension and any requirements that must be met to reinstate the person's license.
  - (g) Individuals admitted to practice before the court shall have a continuing duty to maintain their knowledge of Tribal law to continue practicing before the Tribal Court. This knowledge shall be demonstrated through an annual request to maintain their standing as a Tribal Court practitioner. The form of this annual request shall include a processing fee (unless waived) to be set by the Chief Judge. The Chief Judge shall review all such requests and grant them so long as the person still meets the qualifications for admission in the Tribal Court.
- (3) Upon the filing of the required documents and fee, and the decision of the Chief Judge that an applicant shall be admitted, the Clerk of Court shall enter the attorney or lay spokesman's name on the roster of those persons admitted to practice before the Lac du Flambeau Tribal Court. Such entry shall constitute certification to practice before the Court until such time as the attorney or lay spokesman shall file a notice of retirement, shall die or become incapacitated, or shall be suspended or disbarred from practice by the Lac du Flambeau Tribal Court.

80.304      Fees and Costs; Waiver or Suspension for Indigents.

- (1) Any natural person submitting to the Clerk of Court an affidavit that he or she is then receiving any form of public assistance, the payment of all fees and

costs as to that person in the action, required to be paid by this Code or by court rule, shall thereupon be suspended.

- (2) In instances where the person is not receiving public assistance, the Court shall order waiver of the payment of all fees and costs as to a person in the action, or shall order the suspension of the payment of those fees or costs until the conclusion of the litigation, upon that person submitting to the Court ex parte affidavit stating facts showing that person's inability to pay those fees and costs because of indigency.

80.305      Conduct of Tribal Employees and Officers.

No employee or officer of the Lac du Flambeau Band of Lake Superior Chippewa shall obstruct, interfere with or control or attempt to interfere with or control the Court in any manner, directly or indirectly, or to influence or attempt to influence any judge of the Court or any member of the Court or person appointed by the Court, either directly or indirectly.

80.306      Law Applicable to Civil Actions.

- (1) In all civil actions, the Tribal Court shall apply this Code and all amendments thereto, all duly enacted tribal laws, and all customs and traditions of the Tribe. Where doubt arises as to the customs and traditions of the Tribe, the Tribal Court shall request the advice of persons familiar with tribal customs and traditions.
- (2) If an issue arises that is not addressed by this Code or any other duly enacted tribal law, or any custom or tradition of the Tribe, then the Court may apply the statutes, regulations, or case law of any tribe or the federal government. Application of foreign law under this section shall not be deemed an adoption of such law or an action to defer to the jurisdiction from which that law originates.
- (3) If an issue arises that is not addressed by this Code, any other duly enacted tribal law, any custom or tradition of the Tribe, or the statutes, regulations, or case law of any tribe or the federal government, then the Court may apply the statutes, regulations, or case law of any state. Application of foreign law under this section shall not be deemed an adoption of such law or an action to defer to the jurisdiction from which that law originates.

80.307      Appearances and withdrawal of attorneys/advocates.

- (1) An attorney or lay advocate shall file his or her written appearance before addressing the Court.



- (2) An attorney/advocate may not withdraw his/her appearance without asking leave of Court in writing not less than 24 hours before the matter is set for hearing, and provide proof of service on all parties.
- (3) Withdrawal of an attorney/advocate shall not be grounds for a continuance.

80.308 Costs.

- (1) The Court may assess the accruing costs of the case against the party or parties against whom judgment is given, such costs shall consist of the expenses for voluntary witnesses for which either party is responsible under sec. 80.301(2), and any further incidental expenses connected with the procedure before the Court, as the Court may direct.
- (2) Costs, where allowed, shall be included as part of the final judgment and enforced in the same manner.

80.309 Communications with the Court regarding a pending case.

Communication with a Judge in any fashion (this includes a writing, note, fax, phone call, phone message, speech, or e-mail text) without all other parties is not allowed.

Part Two - Proceedings Before the Trial Court.

80.310 Statement of Claim.

- (1) The statement of claim, by which a proceeding is instituted in the trial court, shall be in the form of an affidavit, the form of which will be provided by the Clerk of Court, or a complaint consistent with the Federal Rules of Civil Procedure. The nature and the amount of the claim shall be stated in concise, non-technical language, and shall give the date or dates when the claim arose.
- (2) The statement of claim shall be signed by the plaintiff or his guardian, if the plaintiff is an individual; by any one of the partners, if the plaintiff is a partnership; by any full-time employee having knowledge of the facts, if the plaintiff is a corporation; and by the Tribal Prosecutor, tribal enforcement personnel, or other appropriate tribal official, if the plaintiff is the Tribe. An attorney admitted to practice before this Court may sign a statement of claim on behalf of a plaintiff that the attorney represents.

80.311 Notice to Defendant; Answer.

- (1) Upon the filing of the statement of claim, the plaintiff shall cause a copy thereof to be served upon each defendant (whether residing on or off the

reservation), together with a notice prepared by the Clerk of Court to each defendant to appear and answer before the Court. If a person is represented by an attorney, service under this rule may be made on the attorney unless the Court orders service on the party. A paper is served under this rule by:

- (a) handing it to the person;
  - (b) leaving it:
    - i. at the person's office with a clerk or other person in charge, or, if no one is in charge, in a conspicuous place in the office; or
    - ii. if the person has no office or the door is closed, at the person's dwelling or usual place of abode with someone who resides there and is of suitable age and discretion;
  - (c) mailing it to the person's last known address—in which case service is complete upon mailing;
  - (d) leaving it with the Clerk of Court if the person has no known address;
  - (e) sending it by electronic means if the person consented in writing—in which case service is complete upon transmission, but is not effective if the serving party learns that it did not reach the person to be served; or
  - (f) delivering it by any other means that the person consented to in writing—in which case service is complete when the person making service delivers it to the agency designated to make delivery.
- (2) The notice issued by the Clerk of Court shall inform the defendant that suit has been instituted against him in the Lac du Flambeau Tribal Court and specify that he must answer to the claim against him within the proper time period as specified herein, or have a default judgment entered against him
  - (3) A defendant shall file his answer within 20 days after service of the notice and copy of the statement of claim upon him on the reservation. When service is made on a defendant residing outside the reservation boundaries, the defendant shall have 30 days within which to file his answer. The defendant must furnish the plaintiff with a copy of his answer.
  - (4) If a defendant does not answer within the time allotted under this rule, the plaintiff may apply to the Court for a default judgment, and the Court may enter judgment against the defendant or may order such other proceedings or disposition as justice requires.

- (5) If it shall appear to the trial court that the defendant did not personally obtain notice of the claim against him, the court may dismiss the action or may order such other disposition as justice requires.
- (6) Upon the filing of defendant's answer or upon the expiration of the time period within which defendant must answer, the trial court shall set a date for trial.

80.312 Filing.

- (1) All documents including Petitions, Motions, or any submission shall be in writing, filed with the Clerk of Court with proof that the document(s) has been served upon all parties or their attorney/advocate. The Clerk of Court will refuse to accept any and all documents which do not comply with this rule.
- (2) Time for filing of these documents must be made within 10 days of the entry of the order, unless otherwise established by the Lac du Flambeau Tribal Code.
  - (a) Request to set aside a default Order or Judgment. A default occurs when the defendant or respondent does not appear in the Court at a scheduled time, and the Court enters an order without the defendant or their attorney/advocate being present. A request to set aside the order must contain a legitimate reason for the absence of the party.
  - (b) Request for rehearing. A request for a rehearing must contain a simple statement of the reason the rehearing should be allowed, such as the discovery of evidence not available to the party at the time of the hearing.
  - (c) Request to modify a final order. A request to modify a Final Order or Judgment must contain a simple statement of why the request should be allowed, such as the Court's failure to consider evidence which is in the record, or that the Order violates other provisions of the Lac du Flambeau Code.
  - (d) The granting or denial of any request is in the sole discretion of the Court.
  - (e) Filing of any request stays the time for the filing of an appeal.

80.313 Continuances.

- (1) All requests for a continuance of a Court date must be submitted in writing not less than 24 hours prior to the Court date.

- (2) All requests must be for good cause shown by the party or with the party's written consent.
- (3) All requests must be served upon all parties of record, with proof of service attached.

80.314      Settlement Form.

The parties prior to the hearing may make a settlement upon such terms as they may agree. The settlement shall be in writing and signed by both parties. Upon filing with the Clerk of Court, the settlement shall be considered the judgment of the Tribal Court.

80.315      Conduct of Trial.

- (1) If the parties appear, the judge shall conduct the trial in an informal manner so as to do substantial justice between the parties. Generally accepted rules of practice, procedure, pleading and evidence will be followed to the extent that substantial justice requires. A verbatim transcript of such proceedings need not be made, unless it is requested by one of the parties. The requesting party shall be responsible for the costs of preparing the verbatim transcript.
- (2) If a defendant fails to appear, judgment may be entered by default where the claim is for a certain sum, or upon such proof by the plaintiff as the court may require. If the plaintiff fails to appear, the defendant may present his defense and obtain a judgment, or the case may be continued, as the Court may direct. If all parties fail to appear, the claim may be dismissed for want of prosecution, or the court may order such other disposition as justice may require.

80.316      Telephonic appearances/testimony.

A party or witness may appear telephonically in the sole discretion of the Court.

80.317      Judgments; Procedure.

- (1) All judgments of the Tribal Court shall be conclusive upon the plaintiff and defendant.
- (2) Judgment shall be entered in the judgment record at the time of the judge's pronouncement of his decision.
- (3) Entry of a judgment on the judgment record entitles the prevailing party to enforcement by the Tribal Court of its terms. A judgment for a sum certain may be enforced by writ of execution against property of the losing party

which is located within the exterior boundaries of the Lac du Flambeau Reservation.

- (4) Upon the request of the party against whom judgment is entered, which can be made orally at the time of the hearing or by petition, and after such inquiry as the judge deems proper, the judge may order for the payment of such judgment by installments, in such amounts and such times as the judge deems just and reasonable. Such order shall also provide for a stay of further proceedings to collect the judgment during said party's compliance with the order.
- (5) The filing of an appeal with the Lac du Flambeau Court of Appeals, pursuant to the requirements of Chapter II of this Code, shall prevent the enforcement of the judgment of the trial court when and if the notice of such appeal is filed with the Clerk of Court.

80.318 Court Enforcement of Judgment.

- (1) If the losing party fails to pay the judgment according to the terms and conditions thereof, and the time for appeal has expired, the Clerk of Court, upon application of the prevailing party, shall certify such judgment to the Tribal Court.
- (2) Upon receipt of the certified judgment, the Tribal Court may issue a writ of execution, which shall command tribal enforcement personnel to collect the amount of the judgment from the losing party. The Tribal Court may instead issue a subpoena to the losing party, ordering him to appear before the Court at a time and place specified and to testify under oath concerning his property, or any debts due or to become due to him, his place of employment, name of employer and the amount of wages received, and other pertinent matters that would enable the prevailing party to collect the judgment.
- (3) Upon receipt of the writ of execution, the tribal enforcement personnel shall serve the writ upon the losing party, and post notice of the writ in the tribal office. Within 30 days, the tribal enforcement personnel shall cause a sale of the losing party's personal property located within the exterior boundaries of the Lac du Flambeau Reservation, which shall have been in the custody of the enforcement personnel until such sale. The proceeds of the sale shall be returned to the Tribal Court within the 30 days above prescribed. The provisions in Section 80.429, concerning disposition of such property, shall be followed by the Tribal Court.
- (4) The losing party may prevent the issuance of a writ of execution, or of judicial sale, by presenting to the Tribal Court sufficient proof that said party has made, or is willing to commence, payment of the judgment to the prevailing

party. Upon such proof, the Tribal Court shall not issue a writ of execution, and, if one has been issued, shall rescind the order.

- (5) The following property shall be exempt from levy and sale under any execution:
- (a) All household goods, furniture, utensils, books and appliances, not exceeding \$1,000 in value;
  - (b) All wearing apparel of every person in the judgment debtor's household, and provisions and fuel for comfortable subsistence of each householder and his family for six (6) months;
  - (c) The tools, implements, materials, stock, apparatus, or other things needed by the judgment debtor to carry on his profession, trade, occupation, or business in which he is principally engaged, not exceeding \$1,000 in value;
  - (d) A dwelling home and appurtenances thereto, owned in fee and occupied by the judgment debtor, not exceeding \$6,000 in value. This exemption does not apply to any mortgage on the homestead which is recorded at the Agency office of the Bureau of Indian Affairs;
  - (e) The dwelling home of a family, after the death of the owner thereof, from the payment of his or her debts during the minority of his or her children.

80.319      Fees.

A fee of \$20.00 shall be charged and collected for the filing of the affidavit for the commencement of any action, unless a different sum is specified by a particular ordinance of the Lac du Flambeau Tribal Council or by another Chapter of this Code; a fee of \$2.00 shall be charged for each defendant to whom a copy of the affidavit is mailed or served by the Clerk of Court. A fee of \$10.00 shall be charged and collected for the issuance of a writ of execution.

80.320      Dismissal for Want of Prosecution.

- (1) The absence of a claimant, petitioner or plaintiff at any Court date may result in the entry of an order dismissing the action for want of prosecution.
- (2) Pending civil cases with no appeal pending and no action of record occurring for a period of one year may be summarily dismissed.

- (3) Upon dismissal of any cause for want of prosecution, the Clerk of Court shall give all parties and their attorneys/advocates notice of the dismissal within five (5) days of the dismissal.

80.321 Application of Federal Rules in Particular Cases.

- (1) The Court may, upon its own initiative or upon the motion of any party, issue an order applying the Federal Rules of Civil Procedure, Federal Rules of Evidence, Federal Rules of Appellate Procedure, or similar federal procedural rules, or any part thereof, to an action to the extent that the federal rules do not conflict with the rules of this Court.
- (2) In its order, consistent with general principles of fairness and justice, the Court may make any appropriate modifications to the federal rules it applies to an action.
- (3) If the Court issues such an order and a federal rule that would apply to the action under the Court's order conflicts with the Constitution of the Lac du Flambeau Band of Lake Superior Chippewa, Chapter 80 of the Tribal Code, or these Rules of the Lac du Flambeau Tribal Court, the laws governing this Court control.

Part Three - Summary Proceedings to Recover Possession of Premises

80.322 Scope of Proceedings to Recover Possession.

- (1) The person or organizational entity entitled to any premises located within the exterior boundaries of the Lac du Flambeau reservation may recover possession thereof by summary proceedings in the following cases:
  - (a) When a person holds over any premises, after failing or refusing to pay rent due under the lease or agreement by which he holds, within seven days of a written demand for possession for nonpayment of rent due;
  - (b) When the person in possession willfully or negligently causes a serious or continuing health hazard to exist on the premises, or causes extensive and continued physical injury to the premises which was discovered by the party seeking possession not earlier than 90 days before institution of proceeding under this section, or refuses for seven (7) days after a written demand to undertake the repair of the premises;
  - (c) When the person in possession has acted or failed to act in a manner which causes his right to continued possession to be forfeited under the terms of a written lease or agreement with the party seeking possession;

- (d) When the person in possession occupies public housing whose tenancy or agreement has been terminated for just cause as provided by the lawful rules of the local housing commission or by federal law or regulation.
- (2) Summary proceedings under this section are the exclusive remedy of one seeking possession of any leased or rented premises. Any person who makes entry into or on such premises to evict a tenant without the above proceedings may subject himself to criminal penalties.

80.323 Demand for Possession or Payment.

A demand for possession or payment shall be in writing, addressed to the person in possession and shall give the address or other brief description of the premises. The reasons for the demand and the time to take remedial action shall be clearly stated. When nonpayment of rent or other sums due under the lease is claimed, the amount due at the time of the demand shall be stated. The demand shall be dated and signed by the person or corporation entitled to possession.

80.324 Complaint.

The complaint shall be in the form of an affidavit, the form for which will be provided by the Clerk of Court. It shall include, where applicable, the amount of unpaid rent or other money due and remaining unpaid as of the date of the affidavit, and the date the same became due, the rental rate and the rental period, and specific reference to local housing commission rules, or to federal law, which establish the basis for just cause for terminating a tenancy in housing operated by the Tribe. In addition, the affidavit shall have attached thereto a copy of the demand for possession or payment. The affidavit shall be signed by the plaintiff or his guardian, if the plaintiff is an individual, or by any full-time employee having knowledge of the facts, if the plaintiff is a corporation.

80.325 Notice.

- (1) Upon filing of the affidavit, the Clerk of Court shall cause a copy thereof to be served upon each defendant, together with a notice to appear and answer before the Trial Judge of the Tribal Court.
- (2) Contents.
  - (a) The notice shall inform the defendant when and where to appear, that he is to bring with him all books, papers, and witnesses needed to establish his defense; and that failure to appear will result in judgment against him for the relief asked for in the affidavit.



- (b) The plaintiff also shall be notified by the Clerk of Court to appear at the time and place specified, and to have with him his books, papers, and witnesses necessary to prove his claim, and that if he fails to appear, the complaint will be dismissed.
- (3) The date for the appearance of the defendant, provided in the notice, shall be within five (5) days of the date of the notice.

80.326 Defenses.

A judgment for possession of the premises for an alleged termination of the tenancy shall not be entered against the defendant if any of the following is established:

- (1) That the rent allegedly due and payable has been paid to the plaintiff by the defendant prior to or at the hearing;
- (2) That the alleged termination was intended primarily as a penalty for the defendant's attempt to secure or enforce rights under the lease or agreement; or
- (3) That the alleged termination was of a tenancy in housing operated by the Tribe, and was terminated without cause.

80.327 Conduct of Trial.

- (1) If the parties appear, the judge shall conduct the trial in an informal manner so as to do substantial justice between the parties. There need not be made a verbatim transcript of the proceedings.
- (2) If the defendant fails to appear, judgment for the plaintiff shall be entered by default. If the plaintiff fails to appear, the complaint shall be dismissed.

80.328 Counter-Claims; Claims for Money Judgment.

If either party has a claim for a money judgment, the Trial Judge may grant such party leave to file such claim and to hear evidence concerning it at the hearing, if the interests of justice are served thereby. The rules of Part Two of this Chapter apply to any such claim so filed.

80.329 Judgment for Plaintiff.

If the judge finds that the plaintiff is entitled to possession of the premises, judgment shall be entered in the judgment record in accordance with that finding, and may be enforced by a writ of restitution as provided herein. If it is found that the plaintiff is entitled to possession of the premises, due to nonpayment of any money due him under the tenancy, the judge shall determine the amount due or in arrears at the time of hearing and shall cause it to be stated in the judgment. The statement in the judgment for possession shall only be for the purpose of

prescribing the amount which, together with costs, shall be paid to preclude issuance of a writ of restitution.

80.330      Writ of Restitution.

A writ of restitution may be issued, commanding tribal law enforcement personnel to cause the plaintiff to be restored and put in full possession of the premises if the following conditions are met to the judge's satisfaction:

- (1)      The tenant, willfully or negligently, is causing a serious and continuing health hazard to exist on the premises or is causing extensive and continued injury to the premises and is neglecting or refusing either to deliver up possession after demand or to substantially repair the premises; or
- (2)      The defendant has failed to comply with the judgment, or to undertake compliance, within ten (10) days after entry of a judgment under Section 80.329.

80.331      Judgment for Defendant.

If the plaintiff fails to prosecute his complaint, or if upon hearing the plaintiff is found not entitled to possession of the premises, judgment shall be rendered to defendant for his costs.

80.332      Fees.

- (1)      When the complaint is for recovery of possession only, the fee for filing an affidavit shall be \$15.00. When a claim for money judgment is joined, the plaintiff shall pay a supplemental filing fee of \$10.00.
- (2)      A fee of \$5.00 shall be charged for each writ of restitution or execution issued.

## CHAPTER IV: CIVIL REMEDIAL FORFEITURE PROCEEDINGS

### 80.401 Purpose.

The purpose of this Chapter is to provide for civil remedial forfeitures of money penalties and property for violation of tribal regulatory ordinances. The remedial measures of this Chapter are civil in nature and are designed and intended to encourage compliance with tribal regulatory ordinances and to compensate the Tribe for damage to the peace, security, welfare, or resources of the Lac du Flambeau Reservation. Said measures are not designed or intended to punish persons for breach of tribal regulatory ordinances.

### 80.402 Party Plaintiff.

Any proceeding instituted in Tribal Court under this Chapter shall be brought in the name of the Lac du Flambeau Band of Lake Superior Chippewa Indians, as plaintiff.

### 80.403 Persons subject to this Chapter.

Any person who is concerned in the commission of a violation remediable under this Article is a principal and may be adjudged to have committed the violation although such person did not directly commit it and although the person who did directly do so has not been subjected to the remedial provisions of this Article. A person is concerned in the commission of a violation if such person:

- (1) Directly commits the violation;
- (2) Aids and abets the commission of the violation; or
- (3) Is party to a conspiracy with one or more others to commit the violation or advises, hires, counsels, or otherwise procures another to commit the violation.

### 80.404 Additional Remedies.

The civil remedial forfeiture remedies governed by this Chapter are not mutually exclusive remedies of the tribe for violation of its ordinances. Nothing in this Chapter shall restrict or curtail the right of the tribe to prosecute or seek the criminal prosecution of any defendant or owner or to institute a civil action for damages in any court against a defendant or owner. In addition to the civil remedies provided in this Chapter, the Tribal Court may order a defendant or owner to perform or refrain from performing such acts as may be necessary fully to protect the tribe, its members, its property, or its natural resources. The Tribal Court may order abatement of a nuisance, restoration of a natural resource, or other appropriate action designed to eliminate or minimize damage caused by a defendant or owner.

## Part One - Civil Remedial Money Penalties

### 80.405 Tribal Ordinances Affected.

Whenever any ordinance of the Lac du Flambeau Band of Lake Superior Chippewa shall provide for a civil remedial money penalty for the breach of such ordinance by any person, the Tribe shall proceed against such person according to the procedures set forth in this Part. The provisions of the other Chapters of this Code shall apply to proceedings instituted pursuant to this Part, to the extent not inconsistent herewith.

### 80.406 Institution of Proceedings; Citation.

Proceedings for the recovery of a civil remedial money penalty shall be instituted by the issuance of a citation by an enforcing officer. Whenever said officer has reason to believe that a person subject to tribal authority has committed a breach of a tribal ordinance which provides for a civil remedial money penalty, such officer shall issue a citation to such person, and file a copy with the Tribal Court.

### 80.407 Notice to Alleged Violator; Jurisdiction.

The issuance of a citation by an enforcing officer in connection with a breach of a tribal ordinance is sufficient notice to the alleged violator that he is charged with a breach, and is adequate process to give the Tribal Court jurisdiction over the person allegedly violating the ordinance upon the filing of such citation with the Court.

### 80.408 Citation Contents.

The citation shall contain a complaint, a case history, and a report of court action on the case. It must appear on the face of the citation that there is a reasonable basis to believe that a breach of an ordinance has been committed and that the charged (defendant) has committed the breach. The citation form shall contain the following:

- (1) The name of the person to whom the citation was issued, together with the person's age and address, if available;
- (2) The tribal permit or license number of the defendant, if applicable;
- (3) The name and tribal department of the issuing officer;
- (4) The breach alleged, the time and place of occurrence, a statement that the defendant committed the breach, the ordinance provision charged, and a description of the breach in language which can be easily understood;
- (5) The maximum civil remedial money penalty for which the defendant might be found liable;

- (6) A date, time, and place for the Tribal Court appearance, and a notice to appear;
- (7) Provision for a deposit and stipulation of default in lieu of court appearance;
- (8) Notice that if the defendant fails to appear at the time fixed in the citation, that he will be defaulted and judgment entered against him in an amount up to the maximum penalty;
- (9) Notice that if the defendant makes a deposit and stipulation of default, judgment will be entered against him in the amount of the deposit; and
- (10) Any other pertinent information.

80.409 Stipulation of Default; Deposit.

- (1) A defendant to whom a citation is issued, or to whom a Notice to Appear is issued under Chapter III of this Code, may make a deposit and stipulation of default in lieu of a court appearance at any time prior to the date set for his appearance before the Tribal Court.
- (2) The amount of the deposit shall be determined by an enforcing officer at the time of issuance of the citation, but shall not exceed the maximum penalty established in the ordinance charged.
- (3) By signing the stipulation of default, the defendant consents to the entry of judgment against him for a penalty not to exceed the amount of the deposit.
- (4) The Clerk of Court or the enforcing officer issuing the citation shall accept the deposit and stipulation of default and shall prepare a receipt showing the purpose for which the deposit was made, which shall be transmitted to the defendant. In the event that acceptance of the deposit and stipulation is made by an enforcing officer, said officer shall file the stipulation of default and a copy of the receipt with the Clerk of Court.

80.410 Burden of Proof.

In all actions under this Part, the Tribe shall have the burden of showing by a preponderance of the evidence that the defendant breached the ordinance charged in the citation or, where applicable, the complaint. The Tribe shall not, however, be required to show that the defendant intended to breach the ordinance charged.

80.411        Default.

Upon the failure of the defendant to appear on the date indicated on the citation or the Notice to Appear, whichever is issued, an entry of default shall be made by the Clerk of Tribal Court and the Tribal Court may proceed with the hearing and enter judgment pursuant to this Part.

80.412        Judgment.

If, after the presentation of all the evidence, the defendant is found by the Trial Judge to have breached the ordinance charged by a preponderance of the evidence, the Tribal Court shall enter judgment against the defendant and in favor of the Tribe for a monetary amount not in excess of the maximum civil remedial money penalty provided for the offense; or if a deposit has been made by the defendant, for an amount not in excess of the amount of deposit. If the judgment is for an amount less than the amount of deposit, the balance shall be returned forthwith to the defendant.

80.413        Enforcement of Judgment.

All civil remedies are available to enforce the judgment of the Tribal Court, including the power of civil contempt. A judgment shall be lien upon any available property of the defendant which is located within the Lac du Flambeau Reservation or within the jurisdiction of the Tribal Court. When necessary, the Tribe may bring suit in any court on the judgment against the defendant or his property located beyond the jurisdiction of the Tribal Court.

80.414        Monies Tendered to the Tribal Court.

Deposits and money paid on judgments rendered pursuant to this Part shall be tendered to the Clerk of Court. Within 20 days after judgment on a deposit or receipt of funds in payment of a judgment, the Clerk of Court shall tender such sums to the Treasurer of the Lac du Flambeau Tribal Council.

Part Two - Civil Remedial Forfeiture of Property

80.415        Tribal Ordinances Affected.

Whenever any ordinance of the Lac du Flambeau Band of Lake Superior Chippewas shall provide for the civil remedial forfeiture of any property for the breach of such ordinance by any person, the Tribe shall proceed against the property according to the procedures set forth in this Part. The provisions of other Chapters of this Code shall apply to proceedings to the extent not inconsistent herewith.

80.416      Institution of Proceedings; Complaint.

Proceedings for the civil remedial forfeiture of property shall be instituted by the filing of a complaint in rem against the property in Tribal Court by an enforcing officer. A complaint shall be filed whenever such officer has a reasonable basis to believe that a tribal ordinance has been breached and that the property is forfeitable under tribal ordinance.

80.417      Contents of Complaint.

It must appear on the face of the complaint that there is a reasonable basis to believe that a tribal ordinance has been breached and that the property is forfeitable under said tribal ordinance. The complaint shall contain the following:

- (1) A description of the property against which proceedings are instituted;
- (2) The ordinance provision allegedly breached;
- (3) A description of the breach in language which can be easily understood;
- (4) The name, address, and other pertinent information about the owner of the property, if known, or a statement that the owner of the property is unknown;
- (5) A request for an order from the Tribal Court to seize the property; and
- (6) The name and signature of the complaining enforcing officer.

80.418      Service of Complaint.

- (1) If the owner of the property is identified in the complaint, the complaint and notice to appear at a hearing on an order to seize shall be served on the owner as provided in Section 80.309.
- (2) If the owner of the property is not identified in the complaint or his present whereabouts are unknown and so recited in the complaint, service shall be made by posting the complaint and notice to appear in the central tribal office and be publication once in a newspaper of general circulation in Vilas County. An affidavit of publication and posting shall be filed with the Tribal Court.

80.419      Seizure of Property Without Order.

- (1) Property may be seized by an enforcing office prior to the filing of a complaint and issuance of an order to seize if one or more of the following circumstances exist:
  - (a) A tribal ordinance authorizes the immediate seizure of the property;

- (b) The property seized presents a danger to persons, property, or a natural resource of the Lac du Flambeau reservation; or
  - (c) The enforcing officer has a reasonable basis to believe that without immediate seizure, the property will be removed from the jurisdiction of the Tribal Court.
- (2) A receipt describing the property seized shall be issued to the person in possession of the property at the time of seizure, if such person is present.

80.420 Seizure of Property with Order.

- (1) All property alleged to be subject to civil remedial forfeiture may be seized pursuant to an order to seize issued by the Tribal Court.
- (2) Any and all property seized, either under sub. (1), or under Section 80.419, shall be held by the Tribal Court pending disposition of the complaint or until a bond has been posted with the Tribal Court.

80.421 Bond for Property Seized.

- (1) The Tribal Court may release the property to the owner upon the posting of a bond with the Court in the amount and under the conditions which the Tribal Judge determines are necessary to protect the interests of the Lac du Flambeau Band of Lake Superior Chippewas. In no event shall the amount of the bond be set at an amount in excess of the fair market value of the property seized.
- (2) Upon the posting of a proper bond, the property shall be available to be levied against if the owner does not return the property to the custody of the Tribal Court in proper condition or if the Tribal Court determines after trial that the property is forfeited.

80.422 Hearing; Time.

- (1) When property has been seized prior to the issuance of an order to seize, a hearing on the order to seize shall be held within five (5) working days after said seizure. If the hearing is not held within that time, the property seized shall be immediately returned to its owner, if known.
- (2) The hearing on the order to seize, requested in the complaint filed with the Tribal Court, shall be heard within 30 days of the filing of the complaint. The date scheduled for hearing shall be included in the Notice to Appear issued to the owner under the provisions of Section 80.309.



80.423 Hearing Procedure.

- (1) At the hearing on the order to seize, the Tribe shall have the burden of showing that there is a reasonable basis to believe that:
  - (a) The property is subject to civil remedial forfeiture; and
  - (b) The property is within the jurisdiction of the Tribal Court.
- (2) The parties may present evidence through the testimony of witnesses. Affidavits will be accepted in lieu of testimony if, in the Trial Judge's discretion, it is determined that the interests of justice would be best served thereby.

80.424 Order to Seize.

- (1) If, after the hearing, the Trial Judge finds that there is a reasonable basis to believe that the property is subject to civil remedial forfeiture under the tribal ordinance alleged in the complaint, and that the property is within the jurisdiction of the Tribal Court, he shall issue an order to seize, directing an enforcing officer to seize the property and hold it pending disposition of the complaint.
- (2) If, after hearing, the Trial Judge finds that there is not a reasonable basis to believe that the property is subject to civil remedial forfeiture under the tribal ordinance alleged, or that the property is within the jurisdiction of the Tribal Court, he shall dismiss the complaint and, if property was seized prior to the hearing, order the property immediately released.

80.425 Contents of an Order to Seize.

An order to seize shall contain the following:

- (1) Description of the property subject to the order;
- (2) Date of filing of a proper complaint for forfeiture, and the name and department of the complaining officer;
- (3) A finding that the property is within the jurisdiction of the Tribal Court;
- (4) A finding that there is a reasonable basis to believe that the property is subject to a civil remedial forfeiture, a brief factual narration of the grounds for the finding, and citation to the ordinance allegedly breached;
- (5) Notice of the date, time, and place of trial; and

- (6) Notice that the property may be released by the posting of a proper bond.

80.426 Service of Order to Seize.

The order to seize shall be served as provided in Section 80.418.

80.427 Existence of Security Interests in Seized Property.

The enforcing officer shall make a reasonable effort prior to the hearing on the order to seize to ascertain whether a perfected security interest exists in the property, and if one does exist, shall give notice to the secured party of any hearing in the case, and shall also give the secured party a minimum of 15 days' notice of the time and place of any sale conducted pursuant to Section 80.429.

80.428 Trial.

- (1) At trial, the Tribe shall have the burden of showing by preponderance of the evidence that the property is forfeitable under the ordinance charged.
- (2) If the Tribe fails to meet this burden, the Tribal Court shall dissolve the order to seize, enter judgment awarding title to the property to the owner, and order the immediate release of the property or discharge of the bond, whichever is appropriate.
- (3) If the Tribe shows that the property is forfeitable, the Tribal Court shall dissolve the order to seize, enter judgment awarding title to the property to the Lac du Flambeau Band of Lake Superior Chippewas, and place the property in the hands of the Tribe for disposition or, if bond was posted, order the bond forfeited to the Tribe.

80.429 Sale of Forfeiture Property.

- (1) Within 30 days after entry of a judgment forfeiting property to the Tribe, but in no event less than 15 days after entry, the Tribe shall sell the property at the highest obtainable price.
- (2) The net proceeds of such sale, after deducting sale expenses, shall be remitted to the Treasurer of the Lac du Flambeau Band of Lake Superior Chippewas, who shall place such sums in the Tribe's general account.
- (3) If there exists a perfected security interest in the forfeited property, and the breach which occasioned the forfeiture was not committed with the knowledge, consent, or connivance of the secured party, there shall also be deducted from the proceeds of sale the amount due under the security

agreement, and such amount shall be paid to the secured party. In the event a sufficient amount does not remain for such purpose after deducting other sale expenses, any amount remaining shall be paid over.

80.430      Sale of Perishable Property.

Any perishable property seized pursuant to this Part may be sold by an enforcing officer at the highest available price, and the proceeds of the sale shall be tendered to the Tribal Court to await such disposition of the proceeds as the Tribal Court shall direct.

CHAPTER V:    RECOGNITION AND ENFORCEMENT OF FOREIGN COURT JUDGMENT

80.501      Purpose.

The purpose of this Chapter is to facilitate, improve and extend by reciprocal court rule the enforcement and/or recognition of Foreign Court judgments.

80.502      Definitions.

- (1)      “Tribal court” means the Tribal Court of the Lac du Flambeau Band of Lake Superior Chippewa Indians of Wisconsin.
- (2)      “Foreign court” means any court other than the Lac du Flambeau Tribal Court.
- (3)      “Foreign judgment” means any final judgment, decree, or order by any court, other than the Lac du Flambeau Tribal Court, regardless of whether the judgment is for money, injunctive, declaratory, or any other relief.
- (4)      “Judgment creditor and judgment holder” are synonymous and mean one who has a judgment rendered in his or her favor.
- (5)      “Judgment debtor” means the party against whom a judgment has been rendered.
- (6)      “Rendering jurisdiction” means the jurisdiction in which the foreign judgment was entered.

80.503      Recognition of Foreign Judgment.

- (1)      Subject to, and limited by, the provisions of this Chapter, the judgments, decrees, orders, warrants, subpoenas, records and other judicial acts of a foreign court are recognized and have the same effect

and are subject to the same procedures, defenses and proceedings as the judgments, decrees, orders, warrants, subpoenas, records and other judicial acts of the Lac du Flambeau Tribal Court.

- (2) Foreign judgments, decrees, orders, warrants, subpoenas, records and other acts of a foreign court that do not comply with the provisions of this Chapter are not recognized by the Lac du Flambeau Tribal Court and shall have no force and effect within the bounds of the Tribe's jurisdiction and/or territory.
- (3) The recognition described in this Chapter applies only if the foreign court provides reciprocal recognition and enforcement of the judgments, decrees, orders, warrants, subpoenas, records and other judicial acts of the Lac du Flambeau Tribal Court.
- (4) The person seeking recognition or enforcement of a foreign judgment complies with the procedures set forth in this Chapter.
- (5) A judgment, decree, order, warrant, subpoena, record or other judicial acts of a foreign court that complies with the above conditions described in subrule (2) is presumed valid unless an objecting party demonstrates that:
  - (a) the foreign court lacked personal or subject matter jurisdiction;  
or
  - (b) the judgment, decree, order, warrant, subpoena, record or other judicial acts of the foreign court
    - (i) was obtained by fraud, duress or coercion;
    - (ii) was obtained without fair notice or a fair hearing;
    - (iii) is inconsistent with an order of the Lac du Flambeau Tribal Court;
    - (iv) is repugnant to the public policy of the Lac du Flambeau Tribe or Tribal Court;
    - (v) is not final under the laws and procedures of the foreign court.
- (6) This rule does not apply to the extent it is inconsistent with controlling federal law.

80.504      Application.

In accordance with, and subject to, the foreign judgment recognition provisions set forth in this Chapter, a foreign judgment that is final and conclusive is enforceable in this Lac du Flambeau Tribal Court pursuant to the following procedure.

80.505      Domestication of Foreign Judgment.

A person seeking enforcement of a foreign judgment shall file:

- (1) A copy of the foreign judgment, which has been authenticated by the clerk or registrar of the foreign court; and
- (2) An affidavit by the judgment holder, or his/her attorney, which includes the following:
  - (a) The name and last known post office address of the judgment debtor and the judgment creditor;
  - (b) Proof that the judgment is final and statement that no appeal is pending;
  - (c) A statement that no subsequent orders vacating, modifying, or reversing the judgment have been entered in the rendering jurisdiction;
  - (d) Proof that the person against whom the foreign judgment has been rendered (*i.e.*, the judgment debtor) is subject to the jurisdiction of this Court with regard to enforcement of the judgment; and
  - (e) Proof that the court from which the foreign judgment was issued provides reciprocal recognition and enforcement of the judgments of this court.

80.506      Notice of Domestication of Foreign Judgment.

Upon the filing of the foreign judgment and affidavit, the judgment creditor shall simultaneously personally serve a notice of the filing of the foreign judgment along with a copy of the foreign judgment and required affidavit to the judgment debtor at the address provided by the judgment creditor and shall complete a proof of service. The notice of the filing of judgment shall include the following:

- (1) The name and post office address of the judgment holder and the judgment holder's attorney, if any; and
- (2) A statement giving notice that an order entering the enforcement of the foreign judgment shall be entered by the Court within twenty-one (21) days of the same having been personally served on the judgment debtor

unless the judgment debtor files written objections with the court along with a request for a hearing within twenty-one (21) days.

80.507      Objections; Hearing; Entry of Order When Objections.

In the event that the judgment debtor files written objections within twenty-one (21) days along with a request for a hearing, the clerk of the court shall send by first-class mail a copy of the objections to the judgment creditor, or his/her attorney. In addition, the clerk of the court shall send by first-class mail a notice of the hearing setting forth the date and time of hearing or the denial of such hearing to the judgment creditor and the judgment debtor, or their respective attorneys. The judgment debtor at the hearing will be required to show cause why the foreign judgment shall not be recognized and/or enforced by the Court. At or after the scheduled hearing, after reviewing all relevant evidence concerning the foreign judgment, the Court shall issue an order either granting or denying recognition and/or enforcement of the foreign judgment.

80.508      Entry of Order Where No Objections.

In the event that the judgment debtor does not file written objections within the twenty-one day (21) day period, an order granting recognition and/or enforcement of the foreign judgment shall be issued by the court.

80.509      Appeal; Stay of Execution; Stay of Proceedings.

If the judgment debtor satisfies the Court that an appeal from the foreign judgment is pending or will be taken, or that a stay of execution has been granted, the Court may stay recognition or enforcement of the foreign judgment until the appeal is concluded, the time for appeal expires, or the stay of execution expires or is vacated.

80.510      Post-Judgment Proceeding Regarding Foreign Judgment; No Waiver of Immunity.

- (1) A foreign judgment creditor may proceed to post-judgment proceedings upon entry of an order enforcing the foreign judgment by the Court. The entry of the order enforcing judgment by the Court shall entitle the judgment creditor to enforce its judgment against the judgment debtor in any manner available to judgment creditors.
- (2) The Lac du Flambeau Tribe does not waive its immunity from suit with regard to the recognition and/or enforcement of foreign judgment in any post-judgment proceedings, even when the Tribe is served as a judgment debtor or a garnishee-defendant for the wages or property of an employee who is a judgment debtor.